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important, therefore, to determine the meaning of the words "medicine" and the "practice of medicine." The science is not limited to that department of knowledge which relates to the administration of medicinal substances. *State v. Wilhite, supra*; *Locke v. Ionia Circuit Judge, supra*. To thus limit it would be to eliminate the corner stone of medical practice, i. e., the diagnosis. *People v. Allcut*, 117 App. Div. 546, 102 N. Y. Supp. 678; *Newman v. State, supra*. It would be to disregard the test which determines whether the practice of a certain treatment is included in the terms "medicine and surgery." *State v. Smith, supra*. The terms are construed as relating to the cure and prevention of diseases, the treatment of abnormal states of the body and its restoration to a healthful condition by any method. *Commonwealth v. Zimmerman* (Mass.), 108 N. E. 893. More specifically, "medicine" denotes the science of understanding diseases, and curing and relieving them when possible. *Bragg v. State*, 134 Ala. 165, 32 South. 767, 58 L. R. A. 925. "Practice of medicine" is the treatment of disease by any method: involving a knowledge of the functions of the human body, the laws of health, the diseases to which the organs are subject and the different modes of treatment. *Commonwealth v. Jewelle*, 199 Mass. 558, 85 N. E. 858. See *Ellis v. People, supra*. But the healing by Christian Science, being accomplished chiefly through prayer, is held not to be embraced within these statutes. *State v. Mylod*, 20 R. I. 632, 40 Atl. 753. See *People v. Cole* (N. Y.), 113 N. E. 790.

Where the statute prohibits one from applying "any drug, medicine, or other agency or application" without having first procured a license, the words "other agency or application" are given such an interpretation—under the maxim, *noscitur a sociis*—as will confine their meaning to the special terms used. *State v. Herring*, 70 N. J. L. 34, 56 Atl. 670, 1 Ann. Cas. 51; *Hayden v. State*, 81 Miss. 291, 33 South. 653, 95 Am. St. Rep. 471. But see *State v. Johnson, supra*. It is contended by some authorities that as the only justification for such statutes is the regulation of dangerous remedies, such as drugs and the knife, a statute which applies to persons not using such remedies exceeds the police power of the state, and results in conferring the exclusive right to treat diseases upon general practitioners. *State v. Biggs*, 133 N. C. 729, 64 L. R. A. 139, 98 Am. St. Rep. 731.

The authorities cited above, although reaching different conclusions, are not necessarily in conflict, for in each case the legislative intent is the controlling factor. Some statutes are intended primarily to protect the public from imposition; while others, being intended to prevent the use of dangerous remedies, do not apply to chiropractors, who use means capable of practically no injury. *Nelson v. State Board of Health*, 108 Ky. 769, 57 S. W. 501, 50 L. R. A. 383. The court places the Idaho statute, interpreted in the principal case, in the latter class.

RAILROADS—FIRES—ACCUMULATION OF COMBUSTIBLE MATERIAL ON RIGHT OF WAY.—Sparks from the engine of a tramway operated by the defendant company set fire to stubble and other highly combustible material negligently allowed to accumulate on the right of way. The fire spread

to the plaintiff's adjoining premises and there damaged his property. *Held*, the defendant is liable. *Meares v. Wynnewood Lumber Co.* (N. C.), 90 S. E. 190.

As a general rule, it is the duty of a railroad company to use reasonable care in keeping its right of way free from combustible materials, such as dry grass, stubble, brush, etc.; and if it fails to exercise such care, it is liable for any damages resulting from fire started in such material by sparks from its locomotives. *Progressive Lumber Co. v. Marshall etc. Ry. Co.* (Tex.), 155 S. W. 175; *Tutwiler v. Chesapeake etc. Ry. Co.*, 95 Va. 443, 28 S. E. 597; *New York etc. Ry. Co. v. Roper*, 176 Ind. 497, 96 N. E. 468. It has been held that leaving such matter exposed to locomotive sparks is negligence *per se*. *Fort Worth etc. Ry. Co. v. Hogsett*, 67 Tex. 685, 4 S. W. 365. See *Louisville etc. Ry. Co. v. Miller*, 109 Ala. 500, 19 South. 989. But the better view seems to be that the question of negligence is for the jury, to be decided in the light of all the surrounding circumstances. *Eddy v. Lafayette*, 163 U. S. 456; *New York etc. Ry. Co. v. Thomas*, 92 Va. 606, 24 S. E. 264. The company must exercise reasonable care, such as would be exercised by an ordinarily prudent man under the circumstances. *Waters v. Atlantic etc. Ry. Co.* (N. J.), 43 Atl. 670. But the term "ordinary man" here means a person experienced in the operation of railroads, as for example an engineer. *Diamond v. Northern Pacific Ry. Co.*, 6 Mont. 580, 13 Pac. 367.

The duty is owed by private railroads, such as are run by lumber companies, as well as by public railroads. *Cratt v. Albermarle Timber Co.*, 132 N. C. 151, 43 S. E. 597. But the plaintiff was held to have accepted the risk when he contracted with the defendants for a right of way for a private railroad through his land. See *Simpson v. Enfield Lumber Co.*, 131 N. C. 518, 42 S. E. 939. The duty cannot be delegated, and the defendant was liable when the fire started in property belonging to a lessee of a portion of the right of way. *Sprague v. Atchison etc. Ry. Co.*, 70 Kan. 359, 78 Pac. 828. And the railroad was also held liable when the fire started on a spur track of which the railroad was lessee. *Kurz etc. Co. v. Milwaukee etc. Ry. Co.*, 84 Wis. 171, 53 N. W. 850. A railroad is not relieved from the duty to clear the right of way merely because it is on a part of a public highway. *Smith v. Ogden etc. Ry. Co.*, 33 Utah 129, 93 Pac. 185. The duty extends to the whole width of the right of way. See *Blue v. Aberdeen etc. Ry. Co.*, 117 N. C. 644, 23 S. E. 275. And where the width of the right of way was not defined, it was negligence to leave dry brush within twelve feet of the track. *Cratt v. Albermarle Timber Co.*, *supra*. It was held not negligence to have wood for use as fuel in locomotives piled on the right of way. *Macon etc. Ry. Co. v. McConnell*, 31 Ga. 133, 76 Am. Dec. 685. And the defendant was not liable when the fire started in cotton bales piled on the station platform awaiting shipment. *Tribette v. Illinois etc. Ry. Co.*, 71 Miss. 212, 13 South. 899.

The plaintiff in such cases is usually an adjoining land owner; but it has been held that where property left on the right of way by mere sufferance of the railroad is burned the owner can recover. *Shields v. Norfolk etc. Ry. Co.*, 129 N. C. 1, 39 S. E. 582. See *Boston etc. Co. v.*

Bangor etc. Ry. Co., 93 Me. 52, 44 Atl. 138, 47 L. R. A. 82. But see *contra Connolly v. Erie Ry. Co.*, 68 App. Div. 542, 74 N. Y. Supp. 277. And some authorities hold that the plaintiff is guilty of contributory negligence when he leaves his own land covered with combustible material. *Ohio etc. Ry. Co. v. Shanefelt*, 47 Ill. 497, 95 Am. Dec. 504; *Kesee v. Chicago etc. Ry. Co.*, 30 Iowa 78, 6 Am. Rep. 643. But the better view is that the plaintiff is under no obligation to clear his own land. *Richmond etc. Ry. Co. v. Medley*, 75 Va. 499, 40 Am. Rep. 734; *Kellogg v. Chicago etc. Ry. Co.*, 26 Wis. 223, 7 Am. Rep. 69.

WILLS—MUTUAL WILLS—REVOCATION.—The defendant and his wife executed mutual wills devising their property to each other during the natural lives of each, with remainder over to their son, if alive, if not to their daughter. On the death of his wife, the defendant encumbered the property covered by the will in favor of his housekeeper. *Held*, the defendant cannot so encumber the property. *Phillip v. Phillip*, 160 N. Y. Supp. 624.

A will executed by two persons jointly which gives the separate estate of the one who shall die first to the survivor is valid, operating as the separate will of each. *Rastetter v. Hoenninger*, 214 N. Y. 66, 108 N. E. 210; *Matter of Diez*, 50 N. Y. 88; *Lewis v. Scofield*, 26 Conn. 452, 68 Am. Dec. 404. In the case of joint wills, not made in pursuance of any contract, the power of the survivor to make a new will is admitted. *In re Cawley's Estate*, 136 Pa. St. 628, 20 Atl. 567; *Sappingfield v. King*, 49 Or. 102, 89 Pac. 142, 8 L. R. A. (N. S.) 1066; *Edson v. Parsons*, 155 N. Y. 555, 50 N. E. 265. A will made subsequent to an agreement between parties, in violation of the same agreement, will be admitted to probate and may revoke a former will made to carry out the provisions of that agreement, the parties being relegated to a court of equity to assert any rights they may have had by reason of the breach of contract. *Sumner v. Crane*, 155 Mass. 483, 29 N. E. 1151, 15 L. R. A. 447. A revocation of the will of a husband in favor of his wife will be implied from an alteration of the circumstances of the parties, as where subsequent to making mutual wills the husband and wife were divorced and the property divided between them. *Lansing v. Haynes*, 95 Mich. 16, 54 N. W. 699, 35 Am. St. Rep. 545. Likewise, one of two mutual wills made by two sisters, each devising all of her property to the other, is revoked upon the marriage of one, though she die without issue and in the belief that her will was unrevoked. See *Hale v. Hale*, 90 Va. 728, 19 S. E. 739.

A mutual will cannot be probated as the will of the survivor, where it has ceased to be the will of the other testator, having been revoked by the latter's marriage as well as by a later individual will, the will being intended to operate as the will of both or not at all. *Peoria Humane Society v. McMurtric*, 229 Ill. 519, 82 N. E. 319. But where two unmarried sisters made separate wills, each in favor of the other, it was held that the marriage of one of them did not revoke the will of the other. *Hinckley v. Simmons*, 4 Ves. Jr. 160. Also, where two persons were authorized to dispose of a certain estate by their joint will,